IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 5504 of 2004

Between:

M/s. Nitya Laboratories Limited, 202, Haritha Bhavanm Estate,
Plot No. 15, Somajiguda, Hyderabad-500 082, rep. by its Executive Director,
Mr. P. Purna Chand.

..... PETITIONER

AND

1 The Commercial Tax Officer, Khairatabad Circle,
Hyderabad.
2 State Level Committee, rep. by its Chairman,
Commissioner of Industries, Government of Andhra Pradesh,
Chirag Ali Lane, Hyderabad-500 001.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction declaring that the Petitioner is entitled to incentive of sales tax deferment for the products of Phase-II of the Petitioner's Industrial unit with effect from 1-3-2000 and direct the 2nd Respondent to amend the final eligibility certificate dated 26-3-2003 accordingly and further direct the 2nd Respondent to amend the said certificate mentioning the products as bulk drugs, intermediates and fine chemicals

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent No.1: GP FOR COMMERCIAL TAX

Counsel for the Respondent No.2: G.P. for Industries

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P.NO. 5504 OF 2004

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

Heard learned counsel for the parties and with their consent this writ petition is being disposed of at this stage, as the matter involves a short point.

The petitioner got some benefits under a scheme known as "Target 2000, New Industrial Policy, 1995". The incentive with which we are concerned in this writ petition was that payment of sales tax was deferred for a period of 14 years with effect from 5.6.1997. The total deferment of tax was Rs.5,13,85,670/-. The petitioner had to complete his unit in two phases. The second phase was not completed within time, it was completed beyond time and also in addition to the original product, four more products were being

produced by the petitioner-industry. Since there was delay in completion of second phase, the petitioner moved an application before the competent authority which is a State Level Committee for grant of benefits under the Target 2000. The State Level Committee accepted the proposal of the petitioner and also the reasons for delay in starting the second phase of industry. The State Level Committee, on 4.3.2003, passed the following order,

> "In view of the circumstances of the case where the implementation of Phase I was delayed due to circumstances beyond their control, the State Level Committee has decided to treat both phases as one unit as appraised by Financial Institution i.e., IDBI and decided to sanction the eligible STD of Rs.7,96,36,910/- (Rupees Seven Crores, Ninety Six Lakhs Thirty Six Thousand Nine Hundred and Ten only) on the computed project cost of Rs.5,89,90,310/- to the Phase-II. This STD will be added to Phase I STD amount of Rs.5,13,85,670/-. Thus the total STD is Rs.13,10,22,580/- (Thirteen Crores Ten Lakhs Twenty Two Thousand Five Hundred and Eighty only)."

The State Level Committee also enhanced the eligibility from Rs.5,13,85,670/- to Rs.13,10,22,580/-. However, the Committee did not change the period for availing of the incentive and it stated that the date from which the period of 14 years shall be reckoned would be 5.6.1997, but it added a rider that the tax based incentives on Phase-II would be prospective from the date of decision of State Level Committee. Admittedly the petitioner went into production in second phase some where in March, 2000, as according to petitioner, he went into production on 1.3.2000, whereas, according to the respondents, he went into production on 3.3.2000 and the eligibility certificate was issued for second phase on 4.3.2003. In terms of the impugned order, the petitioner would not be eligible for an incentive for a period of almost three years. On one hand the State Level Committee did not enhance the period of 14 years for which the incentive was given to the petitioner and on the other hand the State Level Committee reduced the period by a period of three

years as far as production of second phase was concerned. The State Level Committee having found the petitioner to be eligible to get the incentive on sales tax and having also come to the conclusion that the delay in starting the Phase-II was for reasons beyond the control of the petitioner, we do not find it reasonable to hold that the incentive would be available only from the date the sanction was given by the State Level Committee. The original period of 14 years was not extended and the amount against which the incentive could be given to the petitioner was also enhanced, but surprisingly the period was curtailed in terms of G.O.Ms.No. 108, dt. 20.5.1996. From the impugned order it also appears that the State Level Committee was perhaps under the impression that for the period of three years the petitioner had paid the sales tax, whereas, as a matter of fact, he has not paid any tax. The learned Government Pleader for Commercial Taxes submits that the assessments have been made for this period and the petitioner was liable to pay the tax. In any case, the tax liability of the petitioner was deferred for a period of 14 years from 5.6.1997. Therefore any liability for these three years would also be payable after the period of 14 years. We feel that the order of State Level Committee is unjust and arbitrary.

Therefore the impugned order is quashed to the extent it would be applicable prospectively, which would otherwise mean that the order of the State Level Committee would be operative from the date on which the petitioner went into the production in the second phase. The writ petition is accordingly allowed. No order as to costs.

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BN J.

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SAR J.

Dt.16.8.2004

KR

That the Rule nisi has been made absolute as above.

Witness the Hon'ble the Chief Justice Sri Devinder Gupta, on this the
MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

Sd/-

Asst. Registrar

//True Copy//

Section Officer

To

1 The Commercial Tax Officer, Khairatabad Circle,
Hyderabad.
2 State Level Committee, rep. by its Chairman,
Commissioner of Industries, Government of Andhra Pradesh,
Chirag Ali Lane, Hyderabad-500 001.

3. 2 CCs to G.P. for Commercial Tax, High Court Buildings, Hyderabad (Out)

4. 2 CCs to G.P. for Industries, High Court Buildings, Hyderabad (Out)

5. 2 CD copies